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The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development

Letter dated 3 December 1999 from the Permanent Representative of Nicaragua to the United Nations addressed to the Secretary-General

I have the honour to inform you that a few days ago the Republic of Honduras ratified a maritime delimitation treaty concluded between Honduras and Colombia on 2 August 1986, wh Nicaragua was suffering the ravages of a bloody civil war caused by ideological differences resulting from the cold war. Nicaragua rejects the treaty's provisions insofar as they relate to maritime areas under Nicaragua's economic sovereignty which were erroneously considered as belonging to the parties to the treaty, namely, Honduras and Colombia.

The treaty's ratification by the Honduran legislature breaches the provisions of the ruling issued by the Central American Court of Justice on 30 November 1999, paragraph II of which, in order to safeguard the rights of the parties, ordered as a provisional measure that, until a final decision was reached, the Government of Honduras should suspend the ratification procedure and subsequent procedures for the entry into force of the maritime delimitation treaty signed between Honduras and Colombia on 2 August 1986.

Nicaragua was not a party to the treaty, but the delimitation envisaged therein affects 30,000 square kilometres of Nicaragua's maritime areas. Accordingly, the Nicaraguan authorities deem it necessary to inform the international community that they reject the effects of the treaty insofar as it harms Nicaragua's economic sovereignty over its maritime areas and continental shelf. The harm done by the treaty to Nicaragua's sovereignty is so great that, if ratified, its entry into force would leave Nicaragua's extensive Atlantic coast, the longest coastline in Central America, virtually landlocked, without an outlet to the high seas.

I attach a copy of the ruling of the Central American Court of Justice (see annex).

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I should be grateful if you would have this letter and its annex distributed as a document of the General Assembly under agenda item 47.

(*Signed*) Alfonso **Ortega Urbina**
Permanent Representative to the United Nations

Annex

Ruling of the Central American Court of Justice issued on 30 November 1999 in Managua

I have the honour to request you to inform the State of Nicaragua that this Central American Court of Justice, by virtue of rule 17 of its rules of procedure and on behalf of Central America in the case of the application lodged by the State of Nicaragua against the State of Honduras, has issued the following ruling:

"Central American Court of Justice, Managua, Nicaragua, Central America, 3 p.m., 30 November 1999:

HAVING REGARD to the question of the admissibility of the application lodged by the State of Nicaragua, through its Minister for Foreign Affairs, Mr. Eduardo Montealegre Rivas, against the State of Honduras, requesting that the Court: (a) declare that the adoption and ratification of the maritime delimitation treaty by Honduras and the State of Colombia would breach the legal instruments governing regional integration; (b) determine the international responsibility of the Republic of Honduras and the reparation which it would have to make to the Republic of Nicaragua and the Central American institutional system; (c) immediately take provisional measures against the State of Honduras, urging it to refrain from adopting and/or ratifying the aforesaid maritime delimitation treaty with the Republic of Colombia until the sovereign interests of the State of Nicaragua in relation to its maritime areas, the patrimonial interests of Central America and the highest interests of Central America's regional institutions have been safeguarded;

WHEREAS (I): The present case does not involve a border dispute between Nicaragua and Honduras, therefore it is not a case over which the Central American Court of Justice would have jurisdiction only if it was referred to the Court by both parties;

WHEREAS (II): The case involves the alleged breach or violation of community norms of the Central American Integration System (SICA), a matter which falls within the jurisdiction of this Court;

WHEREAS (III): Given the urgency of the situation and the threat posed to the integration process, and despite the fact that the application fails to observe certain non-essential requirements of form and omits some of the supporting arguments in law, the application must be ruled admissible and the State of Honduras must be asked to suspend the treaty's ratification procedure;

ACCORDINGLY: On behalf of Central America, by a majority of votes and based on articles 12 and 35 (final part) of the Tegucigalpa Protocol, articles 1, 6, 14, 22 (a) first part of the first paragraph and 22 (c), 30, 31 and 36 of the Statute of the Central American Court of Justice and rules 5 (1) and (3), 16, 17 and 64 of the rules of procedure;

HEREBY DECIDES: (I) to find admissible the application lodged by the State of Nicaragua against the State of Honduras and to transmit a copy thereof, with the relevant insertions, to the latter State, summoning it to appear in its defence within a period of 60 days from the date of the summons; (II) in order to safeguard the rights of the parties, to order as a provisional measure that, until a final decision is reached, the State of Honduras should suspend the

ratification procedure and subsequent procedures for the entry into force of the maritime delimitation treaty signed between the Republics of Honduras and Colombia on 2 August 1986, such provisional measure to be communicated immediately, by the most expeditious means, to the parties concerned and to the other member States; (III) to respectfully urge the political leaders of the States of Honduras and Nicaragua, as well as the basic organs and the other States members of SICA, to exhaust all means leading to the full integration of Central America and to preserve the Central American community and its patrimony.

Judge Adolfo León Gómez issues the following separate opinion: 1. The application contains several references to the ratification by Honduras of a treaty which has given rise to border disputes over maritime issues involving territorial matters. Under article 22 (a) of the Statute of the Court, which is in force for both the parties, this constitutes an exception to the rule of competence to hear disputes between States members of SICA. The Court could take up such matters only at the request of all the parties concerned, not at the unilateral request of one party. 2. On page 2 of the application, under the heading "Legal provisions breached", the first paragraph refers to article 27 (f) of the Framework Treaty on Democratic Security, the first part of which reads: "To promote the legal security of the borders of the signatory States of this Treaty by delimitations, demarcations and the solution of pending territorial disputes ...". I believe that, by virtue of the aforesaid article 22 (a), this is a border issue which is covered by the exception to the rule of competence mentioned in paragraph 1 of this opinion. 3. On page 3 of the application, under the heading "Petition", the first paragraph requests that provisional measures be ordered against the Republic of Honduras, urging it to refrain from adopting and/or ratifying the maritime delimitation treaty with the Republic of Colombia; this petition too should be excluded, since it refers to maritime issues and therefore comes under the exception set forth in article 22 (a) of the Statute of the Court. 4. Page 3 of the application, under the heading "Arguments in law", states that the application is based on article 22 (b) of the Statute of the Central American Court of Justice, which reads: "Try actions for annulment or breach of agreements of organs of the Central American Integration System". Since the application does not mention, nor base itself upon, any agreement of an organ of SICA, that provision cannot be invoked in relation to the facts set forth in the application. This anomalous situation is governed by the rules of procedure, rule 32 of which states that no action shall be taken on an application which fails to set forth the facts constituting the dispute. 5. The second paragraph on page 4 of the application cites article 31 of the Statute of the Court, apparently as a basis for the first paragraph of the petition on page 3 of the application. However, the provisional measures requested in the present instance cannot be ordered because the Court does not have jurisdiction, the other party not having referred the case to it. 6. According to rule 10 of the rules of procedure of the Court, no action shall be taken on applications which fail to observe the necessary requirements, and the parties shall be ordered to make good their omissions, which in the present instance are the following: (a) the application was addressed to the Secretary of the Court, who, under rule 13 of the rules of procedure, is an auxiliary of the Court but not a judicial organ; (b) under rule 16 of the rules of procedure, the applicant must fully identify the adverse party in accordance with the

legislation in force in the respondent State, which means giving the identity of the legal representative of the respondent State; (c) although the application does not give the name and other particulars identifying the applicant as a formal party to the proceedings, it is well known that the Minister for Foreign Affairs of Nicaragua whose signature appears at the end of the application is not a member of the legal profession; this has a bearing on rule 17 of the rules of procedure, which states that a lawyer must be appointed to represent the applicant in the proceedings — another requirement which the application fails to observe. 7. On page 2 of the application, the first paragraph cites as a breached legal provision the Framework Treaty on Democratic Security, which, as I said earlier, does not fall under article 22 (b) of the Statute of the Court: because that treaty was adopted not by any of the organs of SICA but by the Central American Presidents acting on behalf of their respective Governments, it does not constitute an agreement of a SICA organ as referred to in article 22 (b). 8. The Framework Treaty on Democratic Security is one of the main arguments invoked in the application, but article 67 of that instrument provides that, in the event of a dispute concerning the Treaty, a certain order of dispute settlement mechanisms must be observed, starting with the Meeting of Presidents of SICA, followed by the other means of dispute settlement mentioned in article 45 of the Treaty and lastly, where appropriate, referral to the Central American Court of Justice. These successive procedures have not been observed. 9. Concerning the formal aspect of the application, the Court's established practice as regards the requirements for the lodging of applications is reflected in Judgement No. 1-1-1-95 of 13 January 1995 and other similar judgements, and the application also has not followed this practice.

In view of the foregoing, it is my opinion that the application must be returned to the petitioner, to make good the above-mentioned omissions in accordance with rule 10 of the rules of procedure, before this Court can decide whether or not it has jurisdiction.

Signed: O. Trejos S., Jorge Giammattei A., F. Hercules P., Adolfo León Gómez, Rafael Chamorro M., Orlando Guerrero Mayorga.

The undersigned Secretary notes that Judge José Eduardo Gauggel Rivas is not signing this ruling because he is on leave outside the country.

Signed: Orlando Guerrero Mayorga."

Accept, Sir, the assurances of my highest consideration.
"Unity and Justice"

(*Signed*) Orlando **Guerrero Mayorga**
Secretary

His Excellency Mr. Eduardo Montealegre Rivas
Minister for Foreign Affairs
Republic of Nicaragua